

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
★ FEB 03 2020 ★

United States of America, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
City of New York; and Cynthia Brann, )  
Commissioner of the New York City )  
Department of Correction, )  
 )  
Respondents. )

BROOKLYN OFFICE

Misc. No. \_

**MISC 20-0256**  
**KOMITEE, J.**

UNITED STATES OF AMERICA'S PETITION TO ENFORCE  
ICE ADMINISTRATIVE SUBPOENA NO. ERO-ENF-NYC-202000005 SEEKING  
DOCUMENTS RELATED TO THE INVESTIGATION OF  
ROMERO RAMIREZ-MACIAS A/K/A ROMERO RAMIREZ-MASIAS

The United States of America respectfully petitions to enforce U.S. Immigration and Customs Enforcement (“ICE”) Subpoena No. ERO-ENF-NYC-202000005, which the United States issued to the City of New York and New York City Department of Correction Commissioner Cynthia Brann (“Commissioner Brann”) (collectively, “Respondents”). The subpoena, issued under the authority set forth in 8 U.S.C. § 1225(d)(4) and 8 C.F.R. § 287.4(c), seeks documents relating to the investigation of Romero Ramirez-Macias also known as Romero Ramirez-Masias (“Ramirez-Macias”), for violations of the Immigration and Nationality Act (“INA”).

On January 17, 2020, the United States served Respondents with ICE Subpoena No. ERO-ENF-NYC-202000005. The subpoena was properly issued and seeks information relevant to a pending investigation within the authority of the U.S. Department of Homeland Security (“DHS”), of which ICE is a subcomponent. As of February 2, 2020, Respondents have not complied with the subpoena.

ICE Subpoena No. ERO-ENF-NYC-202000005 is enforceable because it is within ICE's statutory authority, it is not too indefinite, it is not unduly burdensome, and it seeks information reasonably relevant to ICE's inquiry. *See 8 U.S.C. § 1225(d)(4)(A), (B).* Therefore, the United States respectfully requests that the Court enforce the subpoena against Respondents.<sup>1</sup>

Filed along with this Petition are: the United States' Memorandum of Law in support of this Petition; a Declaration from Supervisory Detention and Deportation Officer Edward Bowman; a copy of ICE Subpoena No. ERO-ENF-NYC-202000005; and a Proposed Order to Show Cause compelling Respondents to comply with ICE Subpoena No. ERO-ENF-NYC-202000005.

**Jurisdiction and Venue**

1. This Court has subject-matter jurisdiction over this Petition under 28 U.S.C. §§ 1331, 1345, and 8 U.S.C. § 1225(d)(4)(B), which provides for a subpoena enforcement action to be filed in “[a]ny United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immigration officer.”

2. Venue is proper in this district under 8 U.S.C. § 1225(d)(4)(B) because ICE is conducting its investigation within its jurisdiction. *See also 28 U.S.C. § 1391(b); N.L.R.B. v. Line, 50 F.3d 311, 314 (5th Cir. 1995)* (“Every court that has addressed the subpoena enforcement provisions for . . . federal agencies [with similar statutes] . . . has concluded that venue and jurisdiction are synonymous for these statutes”).

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<sup>1</sup> The New York City Department of Correction is not included as a respondent herein, as it is not a suable entity. *See e.g., Bailey v. New York City Police Dep't, 910 F. Supp. 116, 117 (E.D.N.Y.1996)* (citing New York City Charter, Chapter 17, § 396, which provides that “all actions and proceedings for the recovery of penalties for the violation of any law shall be brought in the name of the City of New York and not that of any agency”); *Negron v. City of New York, No. 10 CV 2757 (RRM) (LB), 2011 WL 4737068, at \*4* (E.D.N.Y. Sept. 14, 2011), *report and recommendation adopted, 2011 WL 4729754 (E.D.N.Y. Oct. 6, 2011)* (“defendant New York City Department of Correction is not a proper party to this action. As an agency of the City of New York, the Department of Correction is not a suable entity.”).

**Issuance and Service of the Subpoena**

3. The federal government has “broad, undoubted power over the subject of immigration and the status of aliens.” *Arizona v. United States*, 567 U.S. 387, 394 (2012).

4. Congress has exercised its authority to make laws governing the entry, presence, status, and removal of aliens within the United States by enacting various provisions of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et seq.*, the Immigration Reform and Control Act of 1986 (“IRCA”), Pub. L. No. 99-603, 100 Stat. 3359, codified at 8 U.S.C. § 1324a *et seq.*, and other laws regulating immigration.

5. These laws codify the Executive Branch’s authority to inspect, investigate, arrest, detain, and remove aliens who are suspected of being, or found to be, unlawfully in the United States. *See* 8 U.S.C. §§ 1182, 1225, 1226, 1227, 1228, 1231, 1357.

6. ICE is responsible for the investigation, arrest, detention, and removal of aliens within the interior of the United States. Declaration of Supervisory Detention and Deportation Officer Edward Bowman (“Decl.””) ¶¶ 2-5; 6 U.S.C. § 251; *see Clark v. Suarez Martinez*, 543 U.S. 371, 374 n.1 (2005) (recognizing that the powers exercised by the Attorney General referenced in the INA have been transferred to DHS and its components).

7. As discussed more fully in the United States’ memorandum of law, ICE has begun an investigation regarding whether Ramirez-Macias is subject to reinstatement of his prior removal order pursuant to 8 U.S.C. § 1231(a)(5), or is otherwise subject to removal pursuant to 8 U.S.C. §§ 1182 or 1227, and subject to detention pursuant to 8 U.S.C. § 1226.

8. Section 8 U.S.C. § 1225(d)(4)(A) empowers the Secretary of Homeland Security and “any immigration officer” to “require by subpoena . . . the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the

United States or concerning any matter which is material and relevant to the enforcement of [the INA] and the administration of [DHS].” It further provides that the immigration officer “may invoke the aid of any court of the United States” to enforce the subpoena. *Id.*

9. Section 8 U.S.C. § 1225(d)(4) also specifies that “[a]ny United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immigration officer may, in the event of neglect or refusal to respond to a subpoena issued” under that authority “issue an order requiring such persons to . . . produce books, papers, and documents if demanded.” *Id.* § 1225(d)(4)(B). A “failure to obey such order of the court may be punished by the court as a contempt thereof.” *Id.*

10. On January 17, 2020, ICE Assistant Field Office Director Jacob Antoninis executed ICE Subpoena No. ERO-ENF-NYC-202000005, under the authority set forth in 8 U.S.C. § 1225(d)(4) and 8 C.F.R. § 287.4(c). Decl. ¶ 19. A copy of ICE Subpoena No ERO-ENF-NYC-202000005 is attached as Exhibit A.<sup>2</sup>

11. Where the recipient fails to comply with the subpoena, the United States may petition for enforcement under 8 U.S.C. § 1225(d)(4)(A).

#### **Respondents’ Noncompliance**

12. The subpoena sought documents containing the following information relating to the unlawful presence of Ramirez-Macias and relevant to locating the alien within the United States:

- a) Documents sufficient to establish the following for Ramirez-Macias, Romero: Home Address, Employment Address, Country of Birth, Place of

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<sup>2</sup> The United States served Commissioner Brann, by hand, on January 17, 2020 at Commissioner Brann’s office, which is located at 75-20 Astoria Blvd. in East Elmhurst, New York. As Commissioner Brann’s office did not have a staff member available to receive the subpoena on January 17, 2020, the United States—out of an abundance of caution—returned to Commissioner Brann’s office the next business day (January 21, 2020) to again serve the subpoena by hand. A New York City Department of Correction captain acknowledged receipt of the subpoena on the same date (January 21, 2020).

Birth, Age, Identification Documents (i.e. driver license number and state, foreign identification card number and country, passport number and country), Bond Information to include the obligor name and address, Federal Bureau of Investigation Number, Emergency Contact address and phone number, including copies of all identification documents.

b) Documents that show the criminal charge relating to Ramirez-Macias, Romero where the arrest date was October 23, 2019, and the charge was Crim. Possession Controlled Substance- 1st: Narcotic Drug 8Ozs or More, under docket #CR-034068-19QN.

*See Ex. A.*

13. As of February 2, 2020, Respondents have not complied with the subpoena. Decl.

¶ 22.

**Prayer for Relief**

For the reasons set forth herein and for the reasons set forth in the United States' memorandum of law in support of this Petition, the United States respectfully petitions this Court for an order compelling Respondents to produce all withheld documents requested in ICE Subpoena No. ERO-ENF-NYC-20200005; and that this Court grant such other and further relief and proper.

Dated: Brooklyn, New York  
February 3, 2020

RICHARD P. DONOGHUE  
United States Attorney

By: /s/  
Joseph A. Marutollo  
Assistant U.S. Attorney  
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cc: **By Email and By Overnight Mail**

James E. Johnson  
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# Exhibit A

1. To (Name, Address, City, State, Zip Code)	DEPARTMENT OF HOMELAND SECURITY  IMMIGRATION ENFORCEMENT SUBPOENA to Appear and/or Produce Records 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4	
Cynthia Brann New York City Department of Corrections Attention: Legal Department 75-20 Astoria Blvd East Elmhurst NY 11370		
Subpoena Number ERO-ENF-NYC-202000005		
2. In Reference To		
<u>RAMIREZ-Macias, Romero Aka. RAMIREZ-Masias, Romero</u> (Title of Proceeding)	A201 108 850 (File Number, if Applicable)	

By the service of this subpoena upon you, YOU ARE HEREBY SUMMONED AND REQUIRED TO:

(A)  APPEAR before the U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), or U.S. Citizenship and Immigration Services (USCIS) Official named in Block 3 at the place, date, and time specified, to testify and give information relating to the matter indicated in Block 2.

(B)  PRODUCE the records (books, papers, or other documents) indicated in Block 4, to the CBP, ICE, or USCIS Official named in Block 3 at the place, date, and time specified.

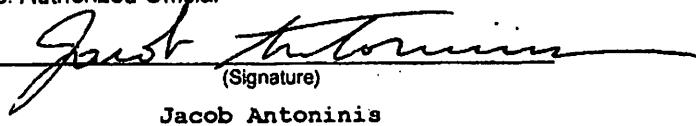
Your testimony and/or production of the indicated records is required in connection with an investigation or inquiry relating to the enforcement of U.S. immigration laws. Failure to comply with this subpoena may subject you to an order of contempt by a federal District Court, as provided by 8 U.S.C. § 1225(d)(4)(B).

3. (A) CBP, ICE or USCIS Official before whom you are required to appear  Name Edward Bowman (Edward.Bowman@ice.dhs.gov)  Title Supervisory Detention and Deportation Officer  Address 535 Federal Plaza Central Islip, NY 11722  Telephone Number 631-851-2207	(B) Date 01/31/2020  (C) Time 3:00 <input type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m.
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4. Records required to be produced for inspection

1. Documents sufficient to establish the following for Ramirez-Macias, Romero: Home Address, Employment Address, Country of Birth, Place of Birth, Age, Identification Documents (i.e. driver license number and state, foreign identification card number and country, passport number and country), Bond Information to include the obligor name and address, Federal Bureau of Investigation Number, Emergency Contact address and phone number, including copies of all identification documents.

2. Documents that show the criminal charge relating to Ramirez-Macias, Romero where the arrest date was October 23, 2019, and the charge was Crim. Possession Controlled Substance-1st: Narcotic Drug 80zs or More, under docket #CR-034068-19QN.

  <div style="border: 1px solid black; padding: 5px; width: fit-content;">           If you have any questions regarding this subpoena, contact the CBP, ICE, or USCIS Official identified in Block 3.         </div>	5. Authorized Official   (Signature) Jacob Antoninis (Printed Name) Assistant Field Office Director (Title) 01/17/2020 (Date)
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## CERTIFICATE OF SERVICE AND ACKNOWLEDGMENT OF RECEIPT

A 201 108 850 Ramirez Macias, Romero aka: Ramirez Macias Roma  
A. CERTIFICATE OF SERVICE

I certify that on 01/21/2020, I served this subpoena on the witness named in Block 1 in the following manner:

(Date)

In person at NYCDOC office at 75-20 Astor in Boulevard  
1975 (Details of how service was effected) East Elmhurst, NY 11370

(Signature of Official Serving Subpoena)

Andre Martone

(Printed Name of Official Serving Subpoena)

Deportation Officer

(Title of Official Serving Subpoena)

## B. ACKNOWLEDGMENT OF RECEIPT

I acknowledge receipt of a copy of the subpoena on the front of this form.

Signature

Title

Captain

Date	<u>1/21/20</u>	Time	<u>0825</u>
	<input checked="" type="checkbox"/> a.m.		<input type="checkbox"/> p.m.